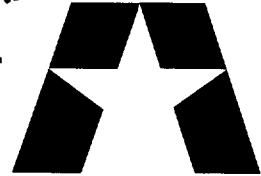


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MAIL BRANCH



Americom

November 5, 1992

FCC Commissioners
c/o Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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6255 Sunset Boulevard
Suite 1901
Los Angeles, California 90028
213/465-7700

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: GC Docket No. 92-223

Dear Commissioners:

Americom, a small company which operates radio stations in Nevada and California, is hereby commenting on your Notice of Proposed Rule Making regarding enforcement of prohibitions against broadcast indecency.

Before commenting directly on your proposal, we believe it is important to point out that we find it extraordinarily difficult to understand your present definition of indecency. We appreciate that the courts have upheld the definition, but we nevertheless feel compelled to stress that disc jockeys, program directors, general managers, newscasters and part-time board operators may have great difficulty where highly-educated FCC Commissioners and judges do not.

As an employer and FCC licensee, we are able to instruct employees to avoid specific words or phrases. But we cannot with any degree of certainty make an employee understand or anticipate what the FCC may consider at a given time to be "patently offensive as measured by contemporary community standards for the broadcast medium."

Part of the problem relates to the Commission's present position that a national, rather than local, standard must be used. People who live in a local community perhaps can understand what their community does or does not find indecent. But it is unlikely that most disc jockeys would know what the nation as a whole considers acceptable.

Our situation is possibly more difficult than most. Two of our stations serve Nevada. One is licensed to the city of Pahrump, where legalized prostitution is among the town's biggest industries. Gambling, of course, is legal throughout the state of Nevada. Casinos are open 24 hours a day and alcohol is served around the clock. Billboards and

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signs on cabs show pictures of scantily-clad or nude women. Adults and children see and are aware of these various activities.

Our radio station employees are part of this community and most likely are able to understand what their listeners, and their listeners' children, would consider "patently offensive." But since our Nevada communities are quite different than the environment in which the FCC Commissioners live, it may be impossible for our employees to project the values of Pahrump, Las Vegas or Reno to the nation's capital and know, in advance, what the FCC considers "patently offensive" in Washington or in areas of the country outside of Nevada.

Although you apparently are not now reviewing your definition of indecency, we urge you to do so in the immediate future. The present definition, although judged legal by the courts, is nonetheless vague and impossible for many broadcast employees (and licensees) to understand. And it is obviously difficult to comply with a rule one cannot understand.

As to your request for comments concerning your Proposed Rule, we offer the following:

Your plan to use a time of day rule to allow and/or prohibit indecency is, unfortunately, a concept which will no longer work. A midnight to 6 a.m. "safe harbor" is an approach which advancing technology has rendered unworkable. In years past, before audio and video cassette recorders were installed in most Americom homes, one could presume that children would not be exposed to broadcasts after midnight. Today, however, that is no longer true.

Many homes now have two or more audio or video cassette recorders. Tens of thousands of children have their own private audio cassette recorders. In fact, one major company now markets recorders exclusively for young children under the name, "My First Sony."

The reality is that the technology of audio and video recording is now pervasive in Americom homes, with children frequently the prime users of the recording devices. Children, and adults, in recent years have started to use internal or external timers to record programs which are broadcast at times they find inconvenient to watch or listen. This practice is now so common that a new phrase -- "time-shifting" -- was created to describe it.

The explosive growth of recording devices in Americom homes has encouraged adults and children to record programs which interest them for listening or viewing at a later time.

It is therefore no longer possible to isolate children from a program merely because it is broadcast between midnight and 6 a.m. The time of a broadcast is irrelevant. If the child has access to a cassette recorder -- and most children do -- the child can and will tape any show of interest.

So the Commission's hope of "channeling" indecent programming to a time when children are not likely to be present will no longer work. Technology has rendered that approach obsolete.

We suggest that a far more effective approach would be to restrict or channel what the Commission refers to as "indecent" programs to areas (i.e., stations) where children are unlikely to be present. This strategy actually takes advantage of technological changes brought on by the Commission's actions in recent years creating numerous new radio and television stations.

Because there are now so many more stations on the air, stations tend to specialize. This, of course, is most apparent in radio, where format fragmentation is the rule even in small markets. But we now see more and more specialization in television, particularly with the continuing growth of cable. (To children, of course, a cable "channel" is the same thing as an over-the-air TV channel. The child merely knows that he or she has 30 or more choices, and could care less what technology is used to originate the picture.)

This new reality of specialization can be used by the Commission as a means of "channeling" or restricting what "indecent" programming. Rather than attempt to force this kind of programming into an artificial time period, where children will merely tape programs they want, the Commission could "channel" or restrict such programming to radio and TV stations which cater to adults and prohibit stations which attract children listeners or viewers from broadcasting indecent material at any time.

Although the Commission may have rejected such an approach in previous years, the recent explosive growth of audio and video cassette recorders has rendered the time channeling approach ineffective, and the proliferation of specialized radio and TV formats has created a new opportunity for "channeling by station" which did not previously exist.

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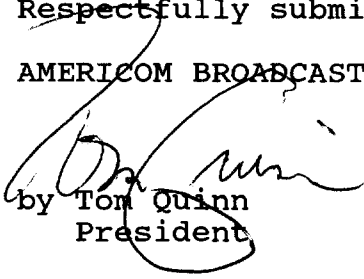
Since the courts have ruled that the Commission cannot ban indecent programming, but can restrict it, we urge you to restrict indecent programming to broadcast stations which can demonstrate that their audience is composed of adults. This will effectively "channel" such programming away from children.

This approach may be imperfect, because a child could accidentally tune to an adult station. But this method will be far more effective than the Commission's plan to "channel" indecent programming to over-night hours. The midnight to 6 a.m. scheme is arbitrary and obsolete. It simply will not protect children. A rule "channeling" such programs to adult stations will be superior.

Since the Commission's goal is protecting children, we urge you to reexamine your predispositions in light of recent technological changes and abandon the out-dated and ineffective midnight to 6 a.m. "safe harbor" concept.

Respectfully submitted,

AMERICOM BROADCASTING



by Tom Quinn
President